

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

WAYNE D. MCDUFFIE,

Defendant.

NO. CR-08-102-RHW

**ORDER GRANTING DEFENDANT'S
MOTION FOR NEW TRIAL**

Before the Court is Defendant's Motion for New Trial and for an Order Immediately Releasing Defendant from Custody (Ct. Rec. 183). A hearing on this motion was held on August 5, 2009. Defendant was present and represented by Richard Wall; the Government was represented by Assistant United States Attorney Aine Ahmed.

Defendant moves for a new trial on the grounds that the Government failed to disclose exculpatory evidence required by *Brady v. Maryland*, 373 U.S. 83, 87 (1963), viz.: the fact that Detective Barrington's fingerprint was found on an electronic scale recovered when Defendant was arrested at the Ash apartment on November 30, 2007.

Brady prohibits the prosecution from suppressing "evidence favorable to an accused...where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* "There are three components of a *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *United States v. Price*, 566 F.3d 900, 907 (9th Cir. 2009) (internal quotation and citation

1 omitted). A failure to disclose *Brady* material is prejudicial if “admission of the
2 suppressed evidence would have created a reasonable probability of a different result.”
3 *Id.* at 911. A “reasonable probability” is one “sufficient to undermine confidence in the
4 outcome of the trial.” *Id.*

5 Defendant argues that the presence of the fingerprint is exculpatory because it
6 undermines the reliability of the evidence and supports his argument that Det.
7 Barrington tampered with the evidence seized from the Ash apartment in an effort to
8 pressure Defendant into providing favorable testimony in an unrelated case. Defendant
9 argues that the failure to disclose was prejudicial because the defense could not
10 adequately prepare to address the significance of the fingerprint at trial, and because the
11 Court might have ruled differently on certain pretrial motions if the evidence had been
12 disclosed.

13 The Government concedes that it became aware of this evidence on July 9, 2009
14 (five days before trial), during an interview with the Government’s fingerprint expert,
15 and did not disclose this evidence to the defense until the Government’s direct
16 examination of the expert at trial. However, the Government argues that (1) the
17 evidence is not actually exculpatory; (2) Defendant had ample opportunity to interview
18 the fingerprint expert and/or retain his own expert to examine the scale; (3) the evidence
19 was disclosed in sufficient time to be of value to Defendant; and (4) no prejudice
20 resulted.

21 The Court rejects the Government’s second argument here because Defendant
22 bears no part of the burden under *Brady*. “Rather, the prosecution has a *duty to learn* of
23 any exculpatory evidence known to others acting on the government’s behalf” and
24 disclose that evidence to the defense. *Price*, 566 F.3d at 909 (emphasis in original).
25 Thus, whether Defendant bears any blame for failing to learn of and develop this
26 information before trial is irrelevant to the Court’s *Brady* analysis.

27 Out of context, the presence of a police officer’s fingerprint on a piece of
28 evidence is not plainly exculpatory. However, during the extensive pretrial proceedings

1 in this matter, including the testimony of both Defendant and Det. Barrington at pretrial
2 hearings, it became clear that Defendant intended to challenge both the legitimacy of
3 the evidence recovered from the Ash apartment and Det. Barrington's credibility as a
4 witness. Counsel's arguments and the evidence adduced at trial only reinforced the
5 centrality of these issues to Defendant's theory of the case. Defendant admitted buying
6 the scale but claimed that the scale, on which Det. Barrington's print was found, was
7 new and that there was no reason for cocaine to be found on the scale. Defendant could
8 not explain how cocaine residue was found on the scale. Defendant was left with an
9 unsupported inference that someone had tampered with the scale.

10 The fingerprint would have provided a direct connection between Det.
11 Barrington and the scale. It was clear that Det. Barrington was not at the Ash apartment
12 to conduct a search or arrest. Those functions were performed by others. Det.
13 Barrington was present to question Defendant about his being a witness to a murder.
14 Under Defendant's theory of the case, there was no reason for Det. Barrington to touch
15 anything at the scene. Defendant had been uncooperative with Barrington in the
16 investigation of the murder. According to Defendant, Det. Barrington must have
17 tampered with the evidence to put pressure on Defendant. Without the print, this
18 inference was difficult at best. With the print, a jury could have found Defendant's
19 theory credible.

20 Moreover, Det. Barrington was arguably the prosecution's key witness, not only
21 testifying about his own participation in the searches and seizures at issue, but also
22 providing expert testimony about drug dealers' *modus operandi* and the process of
23 manufacturing crack cocaine. While the evidence from the Ash apartment was relevant
24 only to the element of intent (*i.e.*, whether Defendant possessed the crack cocaine
25 recovered from the Walnut apartment with the intent to distribute), the jury might have
26 questioned Det. Barrington's credibility as a whole if the jury credited Defendant's
27 theory that Det. Barrington tampered with the scale.

28 In this context of Defendant's theory of the case, the Court finds the presence of

1 Det. Barrington's fingerprint on the scale to be favorable to Defendant, thereby
2 satisfying the first element of a *Brady* violation. Because the Government concedes that
3 it failed to disclose the evidence before trial, the only question remaining is whether the
4 suppression of the evidence prejudiced Defendant. Clearly, the failure to disclose
5 prevented Defendant from presenting any affirmative evidence regarding standard
6 police procedures that might have supported his tampering theory. Rather, defense
7 counsel was limited to unprepared cross-examination of the Government's expert
8 witness, and an unsupported and speculative closing argument. Under these
9 circumstances, the suppression of the evidence until its surprise disclosure at trial
10 undermines the Court's confidence in the outcome of the trial. Therefore, the Court
11 finds that the suppression constitutes a *Brady* violation and requires a new trial.

12 The Court will refer this matter to Magistrate Judge Imbrogno for consideration
13 of the second portion of Defendant's motion (*viz.*, his request to be released from
14 custody).

15 Accordingly, **IT IS HEREBY ORDERED:**

16 1. Defendant's Motion for New Trial and for an Order Immediately Releasing
17 Defendant from Custody (Ct. Rec. 183) is **GRANTED in part**.

18 2. The jury verdict of guilty on counts one and two (Ct. Rec. 180) is **vacated**.

19 3. The Court's Order Regarding Schedule for Guideline Sentencing (Ct. Rec.
20 182) is **vacated**.

21 4. A jury trial is **set** for **September 28, 2009**, at 9:00 a.m. in Spokane,
22 Washington. Counsel shall appear at 8:30 a.m. the first day of trial. Counsel shall
23 contact the Court if they believe a pretrial conference is necessary.

24 4. This matter is **referred** to Magistrate Judge Imbrogno for consideration of
25 Defendant's motion for release from custody.

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1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to enter
2 this Order and furnish copies to counsel, the U.S. Probation Office, and Magistrate
3 Judge Imbrogno.

4 **DATED** this 13th day of August, 2009.

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6
7 *s/Robert H. Whaley*
8 **ROBERT H. WHALEY**
9 Senior United States District Judge

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